

§ 800.102

to authorize the Committee to mitigate any threat to the national security of the United States that arises as a result of a covered transaction.

§ 800.102 Effect on other law.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of federal law, including the International Emergency Economic Powers Act, or any other authority of the President or the Congress under the Constitution of the United States.

§ 800.103 Applicability rule; prospective application of certain provisions.

(a) Except as provided in paragraph (b) of this section and otherwise in this part, the regulations in this part apply from the effective date (as defined in Section 800.210).

(b) Sections 800.204 (Control), 800.205 (Conversion), 800.206 (Convertible voting instrument), 800.211 (Entity), 800.212 (Foreign entity), 800.216 (Foreign person), 800.220 (Party or parties to a transaction), 800.223 (Solely for the purpose of passive investment), 800.224 (Transaction), 800.226 (U.S. business), and 800.228 (Voting interest), and the regulations in subpart C (Coverage) do not apply to any transaction for which the following has occurred before the effective date, in which case corresponding provisions of the regulations in this part that were in effect the day before the effective date will apply:

(1) The parties to the transaction have executed a written agreement or other document establishing the material terms of the transaction;

(2) A party has made a public offer to shareholders to buy shares of a U.S. business;

(3) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or has requested the conversion of convertible voting securities; or

(4) The parties have, in the Committee's view, otherwise made a commitment to engage in a transaction.

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NOTE TO § 800.103: See subpart H of this part for specific applicability rules pertaining to that subpart.

§ 800.104 Transactions or devices for avoidance.

Any transaction or other device entered into or employed for the purpose of avoiding section 721 shall be disregarded, and section 721 and the regulations in this part shall be applied to the substance of the transaction.

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a U.S. business. That transaction is subject to section 721.

Subpart B—Definitions

§ 800.201 Business day.

The term *business day* means Monday through Friday, except the legal public holidays specified in 5 U.S.C. 6103 or any other day declared to be a holiday by federal statute or executive order.

§ 800.202 Certification.

(a) The term *certification* means a written statement signed by the chief executive officer or other duly authorized designee of a party to a transaction filing a notice or information, certifying that the notice or information filed:

(1) Fully complies with the requirements of section 721, the regulations in this part, and any agreement or condition entered into with the Committee or any member of the Committee, and

(2) Is accurate and complete in all material respects, as it relates to:

(i) The transaction, and

(ii) The party providing the certification, including its parents, subsidiaries, and any other related entities described in the notice or information.

(b) For purposes of this section, a *duly authorized designee* is:

(1) In the case of a partnership, any general partner thereof;

(2) In the case of a corporation, any officer or director thereof;

(3) In the case of any entity lacking officers, directors, or partners, any individual within the organization exercising executive functions similar to those of an officer or director of a corporation or a general partner of a partnership; and

(4) In the case of an individual, such individual or his or her legal representative.

(c) In each case described in paragraphs (b)(1) through (b)(4) of this section, such designee must possess actual authority to make the certification on behalf of the party to the transaction filing a notice or information.

NOTE TO §800.202: A sample certification may be found at the Committee's section of the Department of the Treasury Web site at <http://www.treas.gov/offices/international-affairs/cfius/index.shtml>.

§ 800.203 Committee; Chairperson of the Committee; Staff Chairperson.

The term *Committee* means the Committee on Foreign Investment in the United States. The *Chairperson of the Committee* is the Secretary of the Treasury. The *Staff Chairperson* of the Committee is the Department of the Treasury official so designated by the Secretary of the Treasury or by the Secretary's designee.

§ 800.204 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity:

(1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;

(2) The reorganization, merger, or dissolution of the entity;

(3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity;

(4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;

(5) The selection of new business lines or ventures that the entity will pursue;

(6) The entry into, termination, or non-fulfillment by the entity of significant contracts;

(7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity;

(8) The appointment or dismissal of officers or senior managers;

(9) The appointment or dismissal of employees with access to sensitive technology or classified U.S. Government information; or

(10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described in paragraphs (a)(1) through (9) of this section.

(b) In examining questions of control in situations where more than one foreign person has an ownership interest in an entity, consideration will be given to factors such as whether the foreign persons are related or have formal or informal arrangements to act in concert, whether they are agencies or instrumentalities of the national or subnational governments of a single foreign state, and whether a given foreign person and another person that has an ownership interest in the entity are both controlled by any of the national or subnational governments of a single foreign state.

(c) The following minority shareholder protections shall not in themselves be deemed to confer control over an entity:

(1) The power to prevent the sale or pledge of all or substantially all of the assets of an entity or a voluntary filing for bankruptcy or liquidation;

(2) The power to prevent an entity from entering into contracts with majority investors or their affiliates;